IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8673 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHUBHAI SOMABHAI PATEL.....PETITIONER.

Versus

STATE OF GUJARAT & ORS.....RESPONDENTS

Appearance:

MR KS JHAVERI for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
MR HM BHAGAT for Respondent No. 2
NOTICE SERVED on Respondent No. 3
MR AR LAKHIA for Respondent No. 4
MR SURESH M SHAH for Respondent No. 5

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 12/09/2000

ORAL JUDGEMENT

On 30th October, 1990, the Collector for the

District of Banaskantha at Palanpur passed the order withdrawing the notice and refusing to levy more stamp duty qua the Sale Deeds executed & registered. The petitioner, feeling aggrieved by such order, has filed this petition under Article 226 of the Constitution of India praying to issue a Writ of Mandamus or any other appropriate Writ quashing and setting aside the order of the Collector.

2. The facts which led the petitioner to prefer the present petition may in brief be stated. In 1982 in favour of the opponent No.4, a Sale-deed was executed when he purchased the property and another Sale Deed was executed in favour of the opponents Nos.4 and 5 to 9, who also purchased another property. The petitioner who came to know about the sale transactions complained to the Collector on 12th July, 1982 bringing the facts to his notice that the said two Sale-deeds executed were not sufficiently stamped and the value for payment of stamp duty was assessed far below the prevalent market value so as to devicefully evade the stamp duty. A complaint to the Vigilance Commissioner in this regard was also made, and thereafter, the Collector, holding inquiry passed the order on 6th November, 1986. He found that the valuation of the property made was much less than the real market value and it was for the purpose of evading the stamp duty. One of the properties' value was assessed at Rs.2,00,000/- although the market value of which was Rs.12,00,000/-, likewise the value of another property though being Rs.1,75,000/-, assessment thereof for the purpose of paying stamp duty was made at Rs.90,000/-. He therefore, directed to pay the deficit stamp duty and penalty thereon. Against that order, the opponents Nos. 4 to 9 approached the Appellate Authority namely the Chief Controlling Revenue Authority of Gujarat State in September, 1988 without paying 75% of the amount of the duty and penalty. That application was entertained by the Appellate Authority, though it was barred by the period of limitation and delay caused was not at all condoned. The Appellate Authority without issuing a notice to the petitioner and without affording an opportunity to the petitioner to submit, despite the fact that the petitioner had made an application on 7th June, 1988 for giving the opportunity to submit, passed the order and remanded the matter to the Collector. The petitioner was also not informed about the order passed and was not even supplied with the copy of the order. The petitioner, on going to the office of the Collector to inquire whether the stamp duty was paid, came to know that the Appellate Authority had already remanded the matter, and thereafter the Collector had withdrawn the

notice dtd. 16th September, 1989, passing the impugned order on 30th October, 1990. The Collector and the Chief Controlling Revenue Authority ought to have passed the order giving every reasonable opportunity to the petitioner to submit his say. The orders were passed without jurisdiction. The opportunity to submit was also not given. The orders passed are, therefore, invalid and illegal in the eye of law. The appeal was not preferred within 60 days and therefore also the order passed in Appeal is a nonest in the eye of law. The petitioner had made it clear in his complaint that he was ready to purchase both the properties for Rs.12,00,000/- and more. Having come to know about such orders already passed, the petitioner has filed this petition calling in question the legality and validity of both the orders.

3. The learned advocate representing the petitioner has raised only two points so as to challenge the order. Firstly it is contended that when the petitioner was deprived of the opportunity of being heard, the impugned order may be held bad; and secondly any person can challenge the order so as to protect public exchequer and check dishonesty or misuse of power on the part of the concerned authority. The Court has, therefore, to deal with two questions namely (1) whether in such cases a third party is having a locus-standi to complain against the undervaluation made for the purpose of evading stamp duty, and (2) whether the person complaining has a right to have the opportunity to submit his say. The learned advocate for the petitioner in this regard has submitted that if the authority is not performing its duty honestly and sincerely, or is ignorant about the undervaluation and in the interest of the public exchequer, if a third party raises the issue about the levy of more stamp duty, his complaint should not only be entertained but opportunity to submit should also be given to him so as to check the mischief or collusion.

4. Ordinarily, the principle of natural justice is that no-one should be condemned unheard i.e. the parties who are likely to be affected by the order which is going to be passed, opportunity to submit in the matter must be given to them, and if without affording the reasonable opportunity, the order is passed, the same would be bad in law. However, exception to the rule cannot be overlooked. If the Act or statute applicable does not cast an obligation on the part of the authority to grant the opportunity to submit before it passes the order, or takes the decision, or where no prejudice is to be caused, or where grant of opportunity will be the useless formality, or where only one view is possible regardless

of the grant of the opportunity to submit, or the same would lead to restoration of the order not legal in the eye of law, or the authority passing the order does not act in quasi judicial capacity, omission to grant the opportunity to submit, will not render the order passed bad in law, and in that case, the Court should not interfere on the ground of violation of principles of natural justice.

5. In the case on hand, it may be recollected that the petitioner is not a party to the sale in question. He complained to the Collector that respondents Nos.4 and 5 to 9 in whose favour two Sale Deeds were executed skilfully contrived and required stamp duty was not paid. For avoiding the stamp duty, the properties were deliberately under valued. Thereafter, the Collector and in Appeal the Chief Controlling Revenue Authority, passed the above stated orders but without giving any opportunity to submit in this regard to the petitioner. The petitioner is, in view of the matter, a third party.

6. Firstly, it would be better to have a look at the applicable provisions of the Bombay Stamp Act, 1958. Sec. 32-A is the governing provision. Sub-clause (4) thereof provides that the Collector of the district may suo-motu, or on receipt of information from any source within 6 years from the date of the registration of any instrument, may call for the instrument in question and examine the same, for the purpose of satisfying himself as to the correctness of the consideration, or of the market value of the property which is the subject matter of such instrument and the duty payable thereon. After examining, if he has reason to believe that the consideration does not proximate to the market value of such property or he finds that the market value of the said property is not truly and fully set forth in the instrument, the Collector has to proceed as provided in Clause (2) and (3). It may be mentioned that Clause (4) does not apply to the instrument upon which the endorsement has been made under Sec. 32 or instrument in respect of which property, proper duty has been determined under Sub-Section 3. The opening words of Clause(4) indicates that the Collector may of his own accord examine the correctness of the consideration, or on the receipt of the information from any source, may examine the correctness of the value stated. Now the words "on receipt of information from any source" suggest complaint from anyone other than the party to the instrument, or it may be the source from any other way. If the Collector receives any complaint from any person other than a party to the instrument, Clause (4) of Sec.

32-A provides what to do in the matter by the Collector. The Collector has then to examine the instrument for satisfying himself as to the correctness of the consideration or of the market value of the property. He has to prima facie satisfy himself whether the consideration or the market value of the property mentioned in the instrument is correct. For that purpose, he may, in his own way inquire and feel satisfied. It is his domain right to inquire into the matter and feel prima facie satisfied. Nowhere Clause(4) therefore casts an obligation on the Collector to afford an opportunity to the complainant a third party, for necessary submission in the matter.

6. After the Collector is satisfied that the consideration is correct or the market value of the property mentioned, is correct or genuine, he will close the chapter, but if he finds that the consideration or the market value of the property mentioned in the instrument is not correct, he has to proceed further in accordance with Clause (2) and (3) of Sec.32-A. As per Clause (2), the Collector has then to give a notice to the parties concerned and afford the reasonable opportunity of being heard to them, as per the rules governing the field, and determine the correct market value of the property and assess proper duty payable. After the duty payable is assessed, he has to proceed as per Clause(3). The collector shall then direct the party liable to pay the duty or the difference between the amount of the duty determined and the amount of duty already paid and shall also ask him to pay the penalty. This is how under Sec.32-A of the Stamp Act, the Collector has to undergo necessary formalities and pass appropriate order. If he proceeds as per sub-clause (2) and (3), what is pertinent to note is that nowhere the opportunity of being heard to the third party should be given, is mentioned. Of-course, `after giving to the parties concerned a reasonable opportunity to submit', are the words appearing in Clause (2), on which the learned advocate for the petitioner emphasizes much, but those words are not helpful to him because the word "parties" appearing in that clause refers to parties to the instrument and not the third party or any one else. The word "concerned" appearing immediately after the word "parties" makes such meaning clear. Under Clause(2), therefore, the petitioner being a third party, cannot even after the procedure under Clause (2) is followed, claim reasonable opportunity to have his say in the matter.

7. In support of my such view 2 - 3 authorities if

referred to would be sufficient. In the case of Pirbhai Janubhai Shaikh and anr. vs. B.R. Manepatil, Collector of Ahmedabad and anr., VI GLR 554 = AIR 1965 Guj. 817 this Court when came across with likewise question observed in para 4, 7 and 8 that the Chief Controlling Revenue Authority as per the well settled law, is not bound to observe the principles of natural justice unless it is acting in a quasi judicial capacity. If the party is acting merely administratively, there is no obligation on it to give the opportunity to the party who might be affected by the decision. The principles of natural justice including maxim audi-alterem-partem apply only to a Tribunal performing quasi judicial functions. It is further observed in the paras that when the instrument is executed by the parties, it is for them to decide what stamp duty would be required to be paid, if the instrument is not duly stamped, no consequence flows upon it except when it is sought to be produced before the Court in judicial proceedings or the other officer performing official function, as evidence and in that proceedings, the question regarding the payment of stamp duty if raised, the Court or the officer performing the judicial function finds that the instrument is not duly stamped, the same would be required to be impounded under Sec.33 and would require the concerned party to pay the proper duty chargeable along with the penalty, which may be as high as 10 times. The person producing the document would, therefore, later-on make himself liable not only to the payment of amount of proper duty but also the payment of heavy penalty, if the instrument is found not to be duly stamped. It is further observed that when the Collector determines regarding the correctness of the consideration or the market value, there is no question of any contest between two contending parties for there are no two parties before the Collector or the Chief Controlling Revenue Authority, and further there is no dispute between the parties to the instrument and there is no contest between the Collector or the Chief Controlling Revenue Authority on the one hand and the person applying for the determination on the other hand. There is, therefore nothing which could be termed quasi lis between the Collector or the Chief Controlling Revenue authority and the person seeking the determination. The determination, therefore, cannot be regarded as quasi judicial. It is essentially administrative function in its nature or the character and when there is administrative function to be discharged, the principles of natural justice do not come into play.

8. In another decision rendered in the case of

Shailesh Jadavji Varia vs. Sub-Registrar, Narmada Bhavan and ors., 1996(2) G.L.H. 848 (L.B.), it is held, more particularly in para Nos.81 and 83, that the principles of natural justice before the final decision is taken, will come into play, if the sufficient stamp duty is not paid and explanation of the concerned party is sought i.e. where a question of lis is involved. Whenever, therefore, a party to the instrument is to be ordered to pay more stamp duty than already paid, the opportunity of being heard is required to be given to him, because there the question of lis would be involved. It is also observed that as per Rule 3 framed under the Act in making reference, the function performed by the Registering Officer is administrative, pure and simple, and he is not exercising the judicial or quasi judicial power. In fact, he has no power to adjudicate the lis or decide whether proper stamp duty is paid. These two decisions make it clear that whenever the administrative duty is discharged, the authority is not bound to observe the principles of natural justice and afford the reasonable opportunity to the party who is not likely to be affected by the order which is going to be passed. In the case on hand as made clear in the above referred two decisions, the Collector if tries to satisfy himself about the correctness of the consideration or the market value of the property as per Clause (4) of Sec. 32 of the Bombay Stamp Act, he is not discharging his quasi judicial function, but it is his administrative duty. He is, therefore, not bound to afford the opportunity to the parties to the instrument, much less to the third party.

9. The petitioner, in this case being a third party to the instrument cannot therefore claim the opportunity of being heard and opportunity for striking down the order passed on the ground that the principles of natural justice, in the case on hand while passing the impugned orders were set at naught.

10. If the matter is viewed from another angle in the alternative, the petitioner cannot succeed. Even if for a while it is assumed for the sake of argument that the order passed can be termed bad in law because of the breach of the principles of natural justice, the Court despite the same can, in view of the decision in M.C. Mehta vs. Union of India and ors., AIR 1999 S.C. 2583, refuse to strike down the order, if the effect of striking down would result in restoration of another order passed earlier in violation of principles of natural justice.

11. In the case on hand before the impugned order was

passed, initially on 6th November, 1986, the Collector for the Banaskantha at Palanpur had passed the order holding that the consideration mentioned or the market value assessed & stated in the sale-deeds were not correct and stamp duty on Rs.12,00,000/- was required to be charged. Accordingly he ordered to recover the difference of the stamp duty amount along with the penalty amount. That order was challenged in appeal and allowing the appeal, the order was set aside and the Collector was again directed to consider the matter afresh and thereafter the impugned order came to be passed. Now this impugned order is, on the ground canvassed by the petitioner's learned advocate is struck down the earlier order which was set aside and the matter was remanded would be restored. It may be stated that while passing that order, the Collector had not heard even the concerned parties (parties to the instrument) referred to in Clause-2 of Sec.32-A of the Bombay Stamp Act. That order was passed in violation of the principles of natural justice. It was hence void. When that order, which also cannot in law stand, is likely to be revived, if impugned order is set aside, as per the decision of the Honourable Supreme Court in the Case of M.C. Mehta (Supra), the impugned order cannot be struck down.

12. I will now switch over to the next point regarding locus. As per Clause(4) of Sec.32 of the Bombay Stamp Act, in view of the words "from any source", the third party or any one has a locus to inform the authority that in a particular transaction document is executed but stamp duty less than what can be charged in accordance with law is paid, and the issue is required to be probed. Except such limited role, he can expect, nothing further. Thereafter it is for the Collector to examine regarding the correctness of the consideration i.e. the market value stated and such examination or inquiry would be the administrative function pure & simple. No one has, therefore, a right to appear, plead and act in such examination or inquiry. It is therefore, not open to the petitioner to submit that he had a right to appear, adduce the evidence and show how the assessment regarding the consideration or the market value stated was meager, and assessed with a view to avoid the chargeable stamp duty.

13. The learned advocate for the respondent Nos.5 to 9 has rightly further contended in this regard that the petitioner even does not have a locus to prefer this application under Article 226 of the Constitution of India. The person who has a legal right to enforce can

apply resorting to Article 226. The application is to be filed for the extraordinary jurisdiction relating to the relief which must be one to enforce. The existence of the legal right is the foundation of the exercise of jurisdiction of the High Court under Article 226 and that must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. The right which is contemplated must be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified. This is what is made clear by the Supreme Court in the case of Calcutta Gas Company (Proprietory) Ltd. vs. State of West Bengal and ors., A.I.R. 1962 S.C.. 1044.

14. In reply, Mr. Zaveri, the learned advocate representing the petitioner draws my attention to the decision of the Supreme Court in the case of Sprint PRG India Ltd. vs. Commissioner of Customs-I, Delhi, (2000) 2 S.C.C. 486 and submits that whenever the issue regarding the security of the nation or the interest of the nation or state is involved for the purpose of eradication of antisocial and criminal activities, any one can move the Writ Petition for appropriate relief. What happened in that case was that one Advocate had moved the public interest litigation not because of his personal injury or loss, but because of getting compensation to the victim of rape committed by the railway employees and also for the eradication of antisocial and criminal activities at the railway station and that application by the advocate then entertained as a right to life, was the issue involved, along with the issue regarding the security of the State as well as the issue regarding social security. The decision cited cannot be pressed into the service of the petitioner. For what is discussed hereinabove, when in law he is not entitled to have any locus before the concerned authority and has no right of being heard, it is not open to the petitioner to challenge that order preferring Writ petition on the ground canvassed; and also because his personal right is not injured.

15. In this case it is submitted that though no case specifically is put forth initially, the application may be considered to be the Public Interest Litigation ("P.I.L." for short). The submission cannot be accepted in view of the decision of the Supreme Court rendered in the case of Shri Sachidanand Pandey and anr. vs. The State of West Bengal and ors., A.I.R. 1987 S.C. 1109,

wherein it is made clear that such cases are being filed without any rhyme or reason, and guidelines or outlines for entertaining the petition are necessary to be laid down. If the Courts do not restrict, free flow of such cases in the name of P.I.L., the traditional litigation will suffer and the Courts of law, will have to take upon it administrative and executive functions instead of effective dispensation of justice. In the case on hand, for the reasons stated hereinabove, when the petitioner does not have any locus and does not acquire the right to submit on the principles of natural justice, the application under the guise of P.I.L. cannot be entertained, because in that case, this Court will have to, instead of dispensation of justice, take upon it administrative and executive functions.

16. For the aforesaid reasons, the petition being devoid of merits, is liable to be dismissed and is dismissed accordingly. Rule discharged. Interim relief granted earlier stands vacated.

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